IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6673 OF 2007

Sammy Kataria .. Petitioner

Versus

Sanjeev M. Jhangiani & Ors. .. Respondents

Mr.Pandey with Ashok Mishra i/b. Pandey & Co. for petitioner

Mr.Haresh Mansukhani for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th November 2007

P.C.

. This petition is directed against the orders passed by the Revisional Court wherein the revisional court has reversed the view of the

executing court and has concluded that the present petitioner is not liable to be protected by provisions of Slum Act.

2. Respondents before me challenge the order passed by the Executing Court dated 21st April 2007. That order of the executing court was delivered on Misc.Notice No.564 of 2007 and Application No.113 of 2007 which were all in Obstructionists Notice. Respondent sought permission of the executing court under order 21 Rule 22(1)(b) of the C.P.C.to execute decree against the petitioners who are the heirs and legal representatives of deceased obstructionist No.1 Deshraj Kataria. The suit premises are Shop Nos. 8, 9 and 10.

3. In these proceedings, the present petitioner was arrayed as party and he applied vide application No.113 of 2007 for production of documents and more particularly Maharashtra

Govt.Gazette notification in which, according to him, the suit premises are indicated to be falling in a slum area.

4. A consent decree was passed on 7th June 1999 in respect of suit premises at the instance of respondent against the deceased judgement debtor. When the decree was sought to be executed, obstructionist Nos. 1 to 3 obstructed the same. Obstructionists Notice No.47 of 2001 was moved by the decree holder which was made absolute on 9th August 2002. An appeal was filed by the Obstructionist No.1 which was summarily dismissed on 26th February 2003. Therefore, the decree holder was able to execute the decree against the Obstructionist Nos. 2 and 3 in respect of Shop Nos. 9 and 10. However, during the course of execution, Obstructionist No.1 Deshraj Kataria expired on 6th March 2004 which obliged Misc.Notice No.564 of 2007 being taken out by the decree holder seeking above

permission. In other words, the executing court's permission was necessary to execute the decree against the heirs and legal representatives of deceased Obstructionist No.1, that the application/ notice was moved.

5. Petitioner who was respondent No.1 to this notice filed his affidavit and pointed out that shop No.10 are not the suit premises and, therefore, the execution application is not maintainable. He contended that Deshraj Kataria was in possession of Shop Nos.8 and 9 and was carrying on business in the name and style as Bittu Glassware.

6. There was rejoinder affidavit filed and the Obstructionists Notice, Misc.Notice all came to be placed before the executing court. The Executing court held that a copy of Gazette Notification which was produced would demonstrate that C.T.S.No.89 and 2 of Sion Koliwada which was

purchased by the plaintiff under a deed of assignment dated 2nd December 1992 are in fact declared as a slum area on 15th January 1976 and again on 28th July 1994. Holding thus, it concluded that the present petitioners can produce the said document. However, its ultimate conclusion is that the decree cannot be said to be inexecutable or unenforceable only because the present Gazette Notification is issued. The petitioner must demonstrate further that the premises which are covered in the suit fell within the purview of the notification and that having not been proved, the executing court held that the decree can be executed.

7. Petitioner filed revision application against the orders of the executing court. That revision application was placed before a bench of two Judges of the Court of Small Causes at Mumbai.

8. The Revisional court, after perusing the entire materials, concluded that the assignment in favour of plaintiff was in respect of shop No.V-8 to V-12 standing on C.S.No.89(pt) Saltpan and/or C.S.No.2(pt) SSG Nagar and surrounded on the South end by Seva Samiti Coop.Society and ors. Therefore, the Gazette Notification dated 15th January 1976 shows that C.T.S.No.89 is declared as slum area and that area is situate at Bhimwadi, Antop Hill. The area which is declared as slum is different and distinct from the suit premises. The appellate bench has perused the notification and held that even if the same is allowed to be relied upon by the present petitioner, it confers no advantage upon him inasmuch as the suit premises do not come within the purview of the said notification. They are not slum and, therefore, permission of the competent authority to execute subject decree is not necessary.

9. In my view, these are all findings of fact based upon the materials produced. Ultimately, there is consent decree passed in the suit for eviction. All attempts to resist its execution and obstruct the same have necessarily to fail in the present case. Petitioners could not prove by leading cogent and satisfactory evidence that the decree was nullity, either on account of the fraud being perpetrated or that the decree cannot be executed or enforced because the property in question is slum area. Once the petitioner is unable to produce necessary documents and materials, then, he cannot request this Court to take a different view.

10. This is not the Court of further appeal. It has no jurisdiction to disturb pure findings on fact when they are based on the documents produced. In such circumstances, the order under challenge is not vitiated by any error apparent nor can it be termed as perverse so as to call

for interference under Article 227 of Constitution of India. Petition dismissed.

11. At this stage, Mr.Pandey requests that the subject decree be not executed and some time be granted to the petitioner to vacate. He prays for six months time, which request is opposed by Mr.Mansukhani. In my view, considering that the shop premises were occupied by the petitioner for some time and they are source of his livelihood, petitioner can be granted six month's time provided he gives an undertaking within ten days to the following effect:-

(a) That he is in use, occupation and physical possession of the suit premises i.e. Shop No.8;

(b) That he is carrying on business therefrom and has valid licences and authorisation in his favour;

(c) That he will not alienate, encumber, part with possession or create third party rights in any manner whatsoever in respect of the suit premises;

(d) That he would deposit in the executing court a sum of Rs.1500/- per month from the date of application i.e. 1st April 2007 till the possession is handed over to the decree holder. The amount must be paid on 15th of each month. The arrears would be paid within six weeks from today.

12. Needless to state that in default of execution of the undertaking or payment of monthly sums stipulated, decree shall become enforceable and executable forthwith and then the petitioner will be liable to be evicted, if

necessary, with police assistance.

13. That the petitioner will handover vacant and peaceful possession of the suit premises after a period of six months without seeking any further extension. Petition dismissed.

(S.C.Dharmadhikari, J)